

# Questions and Answers for Landowners about Proposed California Foothills Legacy Area Rangeland Conservation Easements

Below are answers to some frequently asked questions about easements. Questions 1 – 5 address what easements are, who can hold them, and why a landowner may be interested in an easement. Questions 6 – 8 address how easements are valued. Question 9 describes how we typically exclude certain areas from easement restrictions. Questions 10 and 11 address easement monitoring and hunting and fishing, respectively. If you have questions that are not addressed below or need further clarification, feel free to contact us at (916) 414-6504 or [fw8plancomments@fws.gov](mailto:fw8plancomments@fws.gov).

## Question 1. **What is a conservation easement?**

Answer 1. A conservation easement is a voluntary, legally-binding agreement between a landowner and a government agency or qualified organization regarding the future uses of private property. The conservation easement is recorded and becomes part of the deed to the property.

The option to place conservation easements on private land is an important private property right that comes with land ownership in the United States. As a private property owner, you have a number of private rights that go along with the ownership of your property. By granting a conservation easement, you agree to sell some of those rights. In a conservation easement, the owner of the property, also known as the Grantor of the easement, retains all rights of ownership not specifically prohibited or limited by the easement. These include the rights to exclude public access and to sell the property. The easement holder, or Grantee, only has rights specifically included in the easement. The rights typically granted by the landowner to the easement holder include development rights and the right to monitor the property on a regular basis for any activity that is inconsistent with the purposes of the conservation easement.

## Question 2. What is the “template easement” for the California Foothills Legacy Area?

Answer 2. The template easement is the starting point from which we negotiate easement terms with individual landowners. Our conservation easements are customized to fit a landowner’s individual situation, and the terms of the easement are established only after detailed discussions between the landowner and the Fish and Wildlife Service. We are providing the attached template easement to give landowners an idea of the terms and restrictions a CFLA easement would typically include.

Question 3. What does the template easement mean when it says that “...the limited rights and interests granted to the UNITED STATES OF AMERICA herein shall become part of the National Wildlife Refuge System and shall be administered by the United States Fish and Wildlife Service...”? Will my ranch become a National Wildlife Refuge?

Answer 3. Absolutely not. This statement simply means that the easements rights granted to us would be administered by the land management division of the Fish and Wildlife Service, also known as the National Wildlife Refuge System, in accordance with the terms of the easement. These rights are specifically spelled out in the easement document.

Question 4. Would third parties be allowed to hold FWS-funded easements?

Answer 4. Several organizations and individuals have asked if the FWS can grant funds to third parties such as land trusts for easements. While this may be done with funds granted through other programs of the FWS (e.g. habitat conservation plan and recovery land acquisition grants), the California Foothills Legacy Area program is different since it would be funded by the Land and Water Conservation Fund and the Migratory Bird Conservation Fund. Congress mandates that only FWS can hold easements funded by these sources. However, we are exploring options to work with 3<sup>rd</sup> parties such as land trusts to do outreach and monitoring for the program.

Question 5. Why Grant or Sell a Conservation Easement?

Answer 5. Ranchers choose to donate or sell conservation easements for a variety of reasons. Often, the decision comes from the landowner's connection to their land, and their desire to see it remain intact and used for ranching, open space or wildlife habitat into the future. Some people also want to ensure that their children can inherit their property in its entirety and find that easements can reduce their estate tax burden. Conservation easements are powerful estate planning tools that can help keep land in the family.

Question 6. **What does a conservation easement do to the value of my land?**

Answer 6. As explained above, a conservation easement removes some of the rights that normally come with ownership of land. Those rights have a value and are determined by an appraisal. Theoretically, the value of the easement is the amount of value reduction in the current market price of the property caused by the restrictions contained in the easement.

Question 7. **How is the value of an easement determined?**

Answer 7. An appraiser will perform an analysis of the market value of a property based upon the "highest and best use" of the land and what similar properties in the area are selling for without the encumbrance of an easement. The appraiser compiles recent comparable sales of lands in the area to determine the approximate market price of the property. This is known as the "Before" value, i.e. the value before an easement is placed on the property. The appraiser will then determine the value of the property with the restrictions in place. Most of the time this means that the appraiser will look at properties that do not have the potential to be developed beyond what the easement allows on the property he is appraising for the easement. This is referred to as the "After" value – the market price after the easement is placed on the property. The difference between these "Before" and "After" prices is the value of the easement.

**Question 8. What amount can I expect to receive from a conservation easement and how soon?**

Answer 8. The value of a conservation easement is based upon both the extent of the restrictions spelled out in the easement and the market for land in a given region. The more development rights a landowner gives up, the more the easement is worth. Also, the market for properties with development potential and conservation properties vary from region to region. As a general rule, the easement value will fall somewhere between 35 and 65% of the market value of the property without the easement. However, there are many variables and we have seen easement values greater or less than this in rare cases.

When the Fish and Wildlife Service has an interest in acquiring an easement that a landowner offers to sell us, we order an appraisal from our Office of Valuation Services. Staff at that office in turn hire qualified private appraisers who prepare an appraisal report. Once our Office of Valuation Services reviews the report for errors, we will present the landowner with an offer based upon the value from the appraisal. At that point, the landowner can decide to sign a purchase option or not. The purchase option usually gives the Fish and Wildlife Service 18 months to obtain funding for the purchase.

**Question 9. What if I want to expand my house or make other changes to my buildings and infrastructure?**

Answer 9. A representative of the Fish and Wildlife Service will work with landowners to make sure that each easement anticipates their long-term needs for the future. Highly developed areas of concentrated use such as barns, garages, homes, equipment storage areas, are usually excluded from the easement. This excluded area is not affected by the easement and the landowner can use it as they always have. We generally suggest an exclusion area of 1 to 5 acres around these developed areas to allow for future needs because the Fish and Wildlife Service does not want to get involved in decisions about how these areas are managed. After the exclusion area is determined, the Fish and Wildlife Service sends a surveyor to the property. The legal description of the exclusion is prepared and specifically excluded from the legal description in the easement deed. Planning for anticipated future use at this stage is very important because the Fish and Wildlife Service cannot sell back any portion of the easement once it is purchased.

**Question 10. How often will a representative of the Fish and Wildlife Service visit my property?**

Answer 10. When the Fish and Wildlife Service purchases an easement on a property we are purchasing a partial interest in the land. Therefore, we have the obligation to the American public to periodically inspect what we purchased. Visits by the refuge representative are also an opportunity to keep in touch and discuss issues and opportunities that are happening in the general area. In general, visits will be scheduled well in advance. We prefer that the landowner or their representative be there because we are now partners in conservation of the land. Our refuge representatives have many properties to visit and other obligations for their time. Rest assured, they will not be visiting you more than annually unless there is a specific reason, such

as a violation of the terms of the easement or you invite us to discuss a project. You may be contacted more often if we need to cross your land to access someone else's easement but generally you will see us once a year for an easement compliance visit.

**Question 11. Can I continue to hunt and fish on my property?**

Answer 11. Yes. Hunting and fishing by you, your friends, or leasees would continue to be allowed and would still be regulated by California Fish and Game. The easement does not allow the public to use your land for hunting or any other purpose without your permission.